

Serial No.: 09/413,012  
Docket No.: R0052CON  
Amendment Dated June 23, 2005  
Responsive to the Office Action dated May 18, 2005

#### REMARKS

Prior to the present Office Action, claims 4, 6-14, and 20-23 were pending. Claims 4, 6-14, and 20-23 are canceled herewith, and claims 34-71 are added. Therefore, claims 34-71 are presently pending.

5 Please note the amendment to the title because there are no method claims.

Please also note the restatement of the "Related Applications" section which is intended to supersede any previous such amendments, in particular the Supplemental Preliminary Amendment dated November 15, 1999. The present application should only claim priority as a continuation of Serial No. 09/133,136 filed on August 12, 1998, now abandoned.

10 In the Notice of Non-Compliant Amendment that objected to the response filed June 9, 2005, the box checked was that a marked up copy was not provided. However, the undersigned believes that a marked-up copy of the paragraph being amended is all that is required.

#### Invention restriction

15 Claims 4, 6-14, and 20-23 were subject to the following restriction:

Group I: Claims 1-9 and 10-11, drawn to a tissue dissector, classified in class 606, subclass 190.

20 Group II: Claims 12-14 and 20-21, drawn to a method for enlarging a surgical cavity, classified in class 604, subclass 96.

Group III: Claims 22-33, drawn to a handle for an elongated tissue dissection, classified in class 607, subclass 145.

25 Applicants elect **without traverse** the invention of Group I drawn to a tissue dissector. Claims 1-9 and 10-11 have been canceled in favor of new claims 34-71. It should be noted that the independent claims are modeled after the previously pending independent claims. For example, claim 34 is modeled after claim 4; claim 43 is modeled after claim 8; claim 52 is modeled

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after claim 9; and claim 63 is modeled after claim 11. Previous independent claims 6 and 7 have been recast in dependent form (e.g., claims 35-36).

Species restriction

5           Claims 4, 6-14, and 20-23 were subject to the following species restriction:

Species 1: Figs. 1-4

Species 2: Figs. 5a-5c

Species 3: Figs. 6a-6c

10           Species 4: Figs. 7-8

Species 5: Figs. 9a-9b and 10

Accordingly, Applicants elect **with traverse** Species 1-2 and 4 shown in Figs. 1-4, 5a-5c, and 7-8. Claims 34-35, 37-41, 43-44, 46-50, 52-53, 55-60, and 62-66 read on Species 1-2 and 4.

15           Claims 36, 45, 55, and 65 in Species 3 should be withdrawn pending allowance of a generic base claim.

Claims 42, 51, and 71 in Species 5 should be withdrawn pending allowance of a generic base claim.

20           Each of independent claims 34, 43, 52, and 63 reads on the elected species. Applicants object to the detailed division of the above species. Each of the independent claims includes the following features which are shown in all of the embodiments of Species 1-2 and 4 (except the flowcharts):

an elongated cannula having a proximal end and a distal end;

a distal tip having tapered outer walls converging to a blunt end for dissecting

25           tissue, the tip being disposed on the distal end of the cannula to dissect tissue and facilitate passage of the cannula through tissue;

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a dilating element disposed on the cannula proximal to the distal tip, the dilating element having a cross-sectional dimension greater than the cross-sectional dimension of the distal end of the cannula and greater than the cross-sectional dimension of the distal tip.

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Applicants therefore assert that the elected species should be examined together because they have acquired a separate status in the art. Namely, class 606, subclass 190, defined as blunt dissectors. There are no subclasses under class 190, and all of independent claims 34, 43, 52, and 63 claim blunt dissectors.

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In responding to this Restriction Requirement, Applicants have canceled two of the identified inventions, and have limited claims to only three of the five identified species. This Restriction Requirement is issued fully 5½ years after the filing date of the present application, and after a long course of examination of the claims without such a Restriction Requirement. Applicants therefore assert that in the interests of fairness and efficiency the elected species should be examined together.

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Respectfully submitted,

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